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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,927	12/06/2000	Kazuhiro Kusuda	00-737	7962

7590

07/25/2003

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EXAMINER

CAPRON, AARON J

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 07/25/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/730,927

Applicant(s)

KUSUDA ET AL. *en*

Examiner

Aaron J. Capron

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

This is a response to the Amendment received on May 14, 2003, in which claims 1, 5-7 and 9 were amended. Claims 1-10 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Algie (U.S. Patent No. 5,564,977).

Algie discloses a gaming machine comprising a dividend determining means for determining a dividend to be paid to a player who a lottery with a predetermined probability, the lottery including a plurality of objects with predetermined probabilities of winning, and for indicating the dividend to the player, display means for providing an execution result executed by the dividend determining means to the player, the dividend determining means including setting means for setting a target payout rate and the probability of winning each of the objects and for setting odds on each of the objects based on the target payout rate and the probability of winning (Table in column 4: column 1); first correcting means for correcting the odds on the object by correcting the probability of winning of the object (4:4-67); second correcting means for correcting the predetermined odds on the object by predetermining the probability of winning based on the approximated odds and displaying the final odds obtained by the first and second

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correction means (Figures 4 and 5). The Examiner views the method of arranging the numbers, calculating the odds/probability of winning and determining the correct payout rate as manipulation of data which Algie clearly does to manipulate the continual display of odds that are displayed in Figure 5. The totality of bets over successive periods iteratively for each of the participants of the race, the continuation of altering the odds and displaying the odds are encompassed by Algie and is therefore treated as equivalent to the Applicants' claimed invention.

Response to Arguments

Applicant's arguments filed May 14, 2003 have been fully considered but they are not persuasive.

Applicants argue that Algie does not describe how odds are dynamically updated and there is no disclosure as to how this updating is carried out. However, Algie discloses that the odds are calculated periodically before a race on an automated display device (3:6-7). At a predetermine time before the race, the CPU receives the current pari-mutuel data from the data stream received via the decoder, extracts the current odds and displays the odds data on the display board (4:41-45). The Applicants' argument fails to take into account the reference and the known prior art as a whole. Algie does not have to disclose within written specification that which is well known to artisan and preferably omits that which is conventional. See *In re Buchner*, 18 USPQ 2d 1331 (Federal Circuit 1991); *Hybritech, Inc. V. Monoclonal Antibodies Inc.*, 231 USPQ 81 (Federal Circuit 1986) cert. Denied. 480 US 947 (1987); *Lindenmann Masahinenfabik GMBH v. American Hoist & Derrick Co*, 211 USPQ 481, 489 (Federal Circuit

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1984). Algie's invention uses the conventional sequence of algorithms to continually calculate the odds and automatically display the odds to show a historical listing of how the odds were changed with respect to player wagering at predetermined times. Therefore, the Applicants' claimed invention fails to preclude Algie's invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

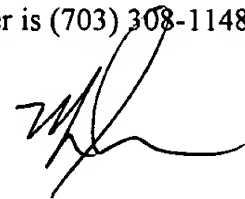
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-Th 8-6.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ajc
July 23, 2003

A handwritten signature in black ink, appearing to be 'MS', with a long horizontal flourish extending to the right.

MARK SAGER
PRIMARY EXAMINER